
Getting Married: The Origins of the Current Law and Its Problems

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The laws regulating how and where couples can get married—as opposed to who they can marry—are widely recognised as being in need of reform. The basic structure of the current law dates back to the Marriage Act 1836, and many elements—the requirements for Anglican weddings and differential treatment of Jewish and Quaker weddings—have a still longer history. Despite the law’s longevity, many of the current requirements have their origins in past panics, tactical compromises or quick fixes. While the laws enacted in 1836 were shaped by their historical context, even then the legal framework did not fit how couples wanted to marry. This paper traces the history of marriage law reform to explain how we ended up with a set of laws that are highly restrictive, inconsistent and complex, and why reform is needed.

Keywords: marriage, weddings, reform

INTRODUCTION

The laws regulating how and where people can get married—as opposed to who they can marry—are widely recognised as being in need of reform.² The basic structure of the current law dates back to the Marriage Act 1836, and many elements—in particular the requirements for Anglican weddings and the differential treatment of Jewish and Quaker weddings—have a still longer history.³ This article traces the history of marriage law reform to explain how we ended up with a set of laws that are highly restrictive, inconsistent and complex, and why reform is needed. It will look first at the making of the 1836 Act and how, even at the time it was enacted, it was not seen as a satisfactory solution. It will then go on to outline the changes that were made in the 1850s

- 1 This article originated in a presentation to the Ecclesiastical Law Society’s conference on ‘The solemnization of matrimony: past, present and future’. The arguments presented here are developed further in R Probert, *Tying the Knot: the formation of marriage, 1836–2020* (Cambridge, 2021).
- 2 See, eg, Law Commission, *Getting Married: a scoping paper* (2015); Law Commission, *Getting Married: a consultation paper on weddings law*, Consultation Paper 247 (2020); R Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriage: status, similarities and solutions* (Bristol, 2020); R Sandberg, *Religion and Marriage Law: the need for reform* (Bristol, 2021).
- 3 See R Probert, *Marriage Law and Practice in the Long Eighteenth Century: a reassessment* (Cambridge, 2009).

and the 1890s, and briefly touch on the process of consolidation that resulted in the Marriage Act 1949.

THE MAKING OF THE MARRIAGE ACT 1836

The 1836 Act has always been seen as an important liberalising measure, in that it recognised the religious diversity of nineteenth-century England and Wales.⁴ It did so by allowing an alternative means by which couples could marry if they did not wish to marry according to the rites of the Church of England. That is phrased quite deliberately, for reasons that will become clear, because what the Act did *not* do was as important as what it did do. Many of the problems with the current law can be traced back to the making of the 1836 Act.

Three key factors shaped the form of the Marriage Act 1836. The first was the way in which the campaign for reform was framed. Protestant dissenters sought relief from compulsory conformity rather than recognition of existing rites. While there was a separate campaign in relation to Catholic marriages, which did focus on the recognition of existing marriages, it was less influential. The second factor was the continuing concern about the risk of clandestine marriage: any proposals for reform of the law had to provide at least the same safeguards as the existing processes for getting married in the Church of England. And the third was the desire of the Whig government to implement the New Poor Law across the entirety of England and Wales.

It is convenient to start with the second of these factors, because it relates to the law against which protestant dissenters were campaigning. The Clandestine Marriages Act 1753 had given force to the canon law of the established Church, by enshrining its requirements in statute and invalidating marriages that did not comply with them.⁵ All weddings, save those of Quakers and Jews, had to be preceded by the calling of banns or by obtaining a licence from the ecclesiastical authorities, had to be solemnised in an Anglican church or chapel, and had to be duly recorded in its registers. While the 1810s and early 1820s had seen debate over the precise formalities that should be required and the consequences of non-compliance, matters had been settled by the Marriage Act 1823. This had re-enacted the requirements set out in the 1753 Act but with the reassuring proviso that only a 'knowing and wilful' failure to comply with them would render a marriage void.⁶ With these issues so recently resolved, it is unsurprising that Parliament wished to ensure that any new alternative would not be any less tightly regulated. Any new scheme would have to

4 O Anderson, 'The incidence of civil marriage in Victorian England and Wales', (1975) 69 *Past & Present* 50–87; S Parker, *Informal Marriage, Cohabitation and the Law, 1750–1989* (Basingstoke, 1990); S Cretney, *Family Law in the Twentieth Century: a history* (Oxford, 2003).

5 Probert, *Marriage Law and Practice*, ch 6.

6 Marriage Act 1823, s 22.

ensure that weddings could not take place in secret and that there would be an opportunity for objections to be made by the parents or guardians of minors, or by anyone who knew of an impediment to the marriage.

No-one really disagreed with the need for safeguards. All accepted the requirement for advance notice, and the need for marriages to be registered. The only question was who should be responsible for these elements. The challenge was to establish a process that was sufficiently independent of the existing Anglican structures to satisfy dissenters, while being sufficiently rigorous to assuage any concerns about a new law being used as a cloak for clandestinity.

That takes us on to what reformers were asking for. The campaign for reform was led by the Unitarians, who argued that the requirement to marry according to the rites of the Church of England was a violation of their religious beliefs, since it compelled them to participate in 'devotions addressed to the Father, the Son, and the Holy Ghost'. Their initial proposal was that they should continue to marry in the Anglican church but be permitted to omit any references to the Trinity.⁷ However, the Church of England was understandably opposed to the idea of couples being able to request changes to its liturgy, and the focus of reform shifted to devising an alternative to the Anglican rite.

Nonetheless, the fact that the principle at stake had been framed in terms of a right to marry in a way that did not violate one's conscience was significant for a number of reasons. It was a principle that reformers could argue had already been accepted in relation to Quakers and Jews. But it was essentially a negative principle: a right *not* to be compelled to do something, rather than a positive right to do something. It was not the same as a principle that non-Anglican religious groups should be able to conduct weddings. It prioritised the finding of an alternative above the form of that alternative. Indeed, with numerous bills coming before Parliament in the 1820s with very different options for reform, it sometimes seemed as if *any* alternative would satisfy the reformers.

Equally, it sometimes seemed that no alternative would satisfy those who were concerned about the risk of clandestine marriages. The existing exemptions for Quakers and Jews were an ambiguous and unhelpful precedent: the 1753 and 1823 Acts had exempted Quakers and Jews but said nothing about how their marriages were to be regulated or even whether they were valid.⁸ While it had been resolved that the validity of Jewish marriages was to be determined by the application of Jewish law,⁹ the Unitarians had no equivalent rules or practices that could be used as the touchstone of validity.

7 A Bill to relieve certain Persons dissenting from the Church of England, from some parts of the Ceremony required by Law in the celebration of Marriages, 1819; A Bill to alter and amend certain Parts of ... The Marriage Act, affecting certain Dissenters, 1822.

8 Clandestine Marriages Act 1753, s 18; Marriage Act 1823, s 31.

9 *Lindo v Belisario* (1796) 1 Hag Con (App) 7; 161 ER 636. The issue of Quaker marriages was considered in a case of criminal conversation in *Deane v Thomas* (1829) M & M 361; 173 ER 1189. It was decided

The idea of permitting ceremonies in licensed places of worship, first floated in 1823, was also regarded as problematic.¹⁰ The system of licensing had its roots in suspicion of those who did not conform to the established Church and a desire to know where they were meeting.¹¹ Any place where dissenters met—however humble the building and however small the congregation—had to be licensed. With licensed places of worship including private houses and barns, there were concerns about the types of places where non-Anglicans might be able to marry.¹² Even tightening up the provisions about which places of worship could be registered for marriage and who would be able to conduct the ceremony was not thought to offer sufficient security by itself.¹³

Concerns about delegating responsibilities to dissenters led to an alternative solution being put forward in 1827: that of allowing Unitarians to marry before a justice of the peace, mayor or alderman.¹⁴ This proposal reflected the insistence of many dissenters that the legal element of marriage could be stripped back to a (necessarily non-Anglican) civil contract. While the proposal was not uncontroversial, it did enjoy a considerable measure of support, and the idea of marriages being made in the presence of a representative of the state was to be a key element in the provisions of the Marriage Act 1836.

While dissenters were divided on whether and how marriage law should be reformed, they were united in their desire for a new system of civil registration of births and deaths as well as of marriages.¹⁵ By the 1830s it was increasingly clear that civil registration held the key to reform. The question was who would be responsible for this. The Marriage Bill 1836 proposed using the machinery of the New Poor Law.¹⁶ A new system of civil preliminaries was created, whereby notice would be given to the superintendent registrar.¹⁷ Marriages were to take place in registered places of worship in the presence of a registrar, thereby combining the safeguards of both the 1823 Bill and the 1827 Bill; in other words, the location was regulated *and* a representative of

that, for this purpose, it would be sufficient to prove a marriage according to the forms of the Society of Friends, but this fell short of a decision on how validity would be tested.

10 A Bill . . . for granting Relief to His Majesty's Subjects, not being members of the Church of England, in relation to the solemnization of matrimony, 1823.

11 W Kennett, 'The place of worship in solemnization of a marriage', (2015) 30:2 *Journal of Law and Religion* 260–294.

12 HL Deb 12 June 1823, vol 9, col 970.

13 As demonstrated by the fate of the 1824 and 1825 Bills 'for granting relief to certain Persons dissenting from the Church of England, in relation to the Solemnization of Marriages'.

14 A Bill . . . for granting Relief to certain Persons dissenting from the Church of England, in respect of the Mode of celebrating Marriages, 1827.

15 M Cullen, 'The making of the Civil Registration Act of 1836', (1974) 25 *Journal of Ecclesiastical History* 39–59.

16 The Poor Law Amendment Act 1834 had made provision for parishes to be united into larger districts known as unions for the purposes of the administration of relief, with each union having its own workhouse, board of guardians and a number of officers.

17 Marriage Act 1836, s 4.

the state would be present.¹⁸ Registrars would be responsible for ensuring that the marriage was registered. For those who objected to marrying in a place of worship, there was also the option of marrying in the office of the superintendent registrar.¹⁹

Most accounts of the passage of the 1836 Act suggest that the machinery of the New Poor Law was chosen because it was a new nationwide system.²⁰ It was certainly new. In fact, it was so new that it was not actually in force across most of the country. As of February 1836, only 228 unions had been formed under it in England and Wales. Around 100 more had been formed by the time that the Marriage Act received royal assent, but even so they accounted for only around a third of the population of England and Wales.²¹ Moreover, the roles of superintendent registrar and registrars did not actually exist under the New Poor Law: while the existing clerks to the Poor Law Board of Guardians were to be given first refusal of the new post of superintendent registrar, the necessary army of registrars had to be recruited from scratch.²²

Why, then, did the government base the new system of civil registration and marriage law on this very shaky basis? It seems clear that it wanted a pretext to press ahead with the implementation of the New Poor Law across the entirety of England and Wales, but the considerable opposition it met with indicated that there needed to be some pretext other than the unpopular Poor Law itself.²³

Viewed as a matter of politics, the provisions of what would become the 1836 Act were masterly in simultaneously giving dissenters what they had said they wanted, in assuaging the concerns about clandestine marriages that had been voiced in relation to earlier measures, and in advancing other agendas. First, the Act ensured that no-one would be compelled to marry in a way that was contrary to their conscience. Apart from the inclusion of certain prescribed words, there was no regulation of what form weddings should take.²⁴ There was not even any explicit requirement that weddings in registered places of worship had to be celebrated with religious rites, and no prohibition on religious content being included in weddings in the office of the superintendent registrar. It was recognised that some highly religious couples might want to express their consent to marriage in a non-religious form, and that exactly what should be classified as 'religious' might be a matter of debate. There was no regulation of who should conduct the ceremony: it could be conducted by a priest or

18 Ibid, s 20.

19 Ibid, s 21.

20 See, eg, Parker, *Informal Marriage*, p 58.

21 Probert, *Tying the Knot*, ch 2.

22 Births and Deaths Registration Act 1836, s 7.

23 M Rose, 'The Anti-Poor Law movement in the north of England', (1966) 1:1 *Northern History* 70–91; A Brundage, *The Making of the New Poor Law, 1832–1839: the politics of inquiry, enactment and implementation*, 1832–39 (London, 1978), ch 3.

24 Marriage Act 1836, ss 20 and 21.

minister, or it could be conducted simply in the presence of the registrar. But from the petitions that continued to flood into Parliament during the passage of the legislation it was clear that the solution was not quite what many dissenters had wanted. Their request continued to be that ‘the solemnization of Marriages amongst Dissenters may at the option of the parties be effected by their own Ministers, or by a Civil Magistrate’.²⁵ This suggested that, for dissenters, the person conducting the ceremony was more important than the place.

The provisions of the 1836 Act also enabled the government to bring most parts of England and Wales under the auspices of the New Poor Law. But in some places opposition to the New Poor Law was so great that attempts to implement it—and therefore the new legislation on civil registration and marriage—were halted. In others, unions could not be formed under the New Poor Law because there was a pre-existing union. This inability to implement the New Poor Law everywhere necessitated various temporary expedients. One such expedient related to the publication of notices of marriage. The 1836 Act stipulated that these should be read before the weekly meetings of the relevant board of guardians, just as banns were read in church.²⁶ For districts that as yet had no such board, it was therefore provided that notices could be posted in the office of the superintendent registrar—which, it should be noted, was generally not an institutional building but simply the office of whoever happened to be the superintendent registrar at the time, often a local solicitor.²⁷

Overall, the 1836 Act was very far from being a coherent codification of the laws governing marriage. Anglican weddings continued to be governed by the 1823 Act, save that they could now be preceded by civil preliminaries and that copies of the marriage register had to be submitted to the civil authorities.²⁸ Quaker and Jewish weddings were somewhat clumsily brought within the scope of the 1836 Act but only in that couples were required to give notice and that a process was established for their marriages to be registered, with Jewish secretaries being certified by the Board of Deputies and Quaker registering officers by the recording clerk of the Society of Friends.²⁹

The take-up of the 1836 Act was just as diverse and complicated as the campaign for reform had been. Catholics were more likely to register their places of worship for marriage and to get married there than were protestant dissenters. Few couples married in a register office and those that did were often very far from rejecting religion in doing so: we know from contemporary accounts

25 Petitions presented by 129 Independents from Derby (*Second Report of the Select Committee*, 18 February 1836, appendix, p 16), 324 Baptists from Nottingham and 4,793 Dissenters from Essex (*Fourth Report*, 8 March 1836, appendix, p 40).

26 Marriage Act 1836, s 6.

27 Births and Deaths Registration Act 1837, s 24.

28 Marriage Act 1836, s 4; Births and Deaths Registration Act 1836, s 31.

29 Marriage Act 1836, s 2; Births and Deaths Registration Act 1836, s 30.

that dissenting ministers were present at such weddings, read passages from scripture and led prayers for the couple. This illustrates both the strength and the weakness of the 1836 Act. It was intended to be flexible, with no rigid distinction between religious and secular.³⁰

REFORMS IN THE 1850S

The story of the reforms that were enacted in the 1850s is a far messier one, as the government reacted to a number of different problems that had arisen. The Places of Worship Registration Act 1855 made it possible for non-Christian places of worship to be certified as such, and so to be registered for the purposes of marriage. At the time, the Act's main significance was for synagogues that rejected the authority of the Board of Deputies. The West London synagogue, which had been refused recognition by the Board of Deputies and whose members had had to marry in the register office, quickly became registered. The *need* for the synagogue to be registered was removed, however, the following year by the Marriage and Registration Act 1856, which allowed it to certify its own secretaries, and those of any synagogues associated with it.³¹

The 1856 Act also amended the requirements for civil preliminaries. Dissenters had complained that the reading of notices of marriage before boards of Poor Law guardians was insulting. In the absence of any other satisfactory solution, legislators fell back upon the same temporary expedient that had been devised for districts without a board of guardians—that of displaying notices in the superintendent registrar's office.³² Significantly, no-one attempted to suggest that this had worked well or that any advantage would accrue from adopting it more widely. Yet notices of marriage are still to this day displayed in the register office, showing how easily an unsatisfactory stopgap can become a permanent fixture.

Even more significantly, the 1856 Act subtly recalibrated the roles of the State and the Church in the making of marriage. Earlier in 1856, prosecutions had been brought against two Anglican clergymen under the Marriage Act 1823 for having conducted ceremonies without banns or licence. The reason for this omission—and the real reason underlying the prosecution—was that the couples whose ceremonies they had conducted had already married under the 1836 Act, one in a register office and one in a registered place of worship. Before the clergymen were tried, however, a clause was added to the 1856 Bill stating that couples could, if they so wished, have an additional religious ceremony after marrying before the registrar but that it would not 'supersede

30 Probert, *Tying the Knot*, ch 3.

31 Marriage and Registration Act 1856, s 22.

32 Marriage and Registration Act 1856, s 4.

or invalidate any Marriages previously contracted'. The phrasing of this is important: marrying before the registrar obviously encompassed weddings in registered places of worship as well as in register offices.

The day after this clause was added, the clergyman who had conducted a ceremony for a couple who had been married in a registered place of worship apologised and the prosecution against him was dropped.³³ The clause was then amended so that it only applied to a religious ceremony being conducted after a wedding in the register office. The implication was that it was *not* possible to have a second religious ceremony after a wedding in a registered place of worship. A further addition was then made to the clause *prohibiting* the use of a religious service in the register office.³⁴ This made sense as a matter of logic. After all, it would be odd if a clergyman was prohibited from remarrying a couple who had married in a registered place of worship, but not a couple who had had the exact same religious ceremony in a register office. But with a single stroke this amendment recast marriage in the register office as a purely secular rite and removed the flexibility of the original Act. This division between religious and secular—now seen as fundamental to the law of marriage—essentially came about by accident rather than by design.³⁵

THE MARRIAGE ACT 1898

In the 1870s a new campaign for reform began. The inability of Catholic priests and Nonconformist ministers themselves to register the marriages that they conducted came under renewed scrutiny, with a campaign to dispense with the presence of the registrar at weddings in registered places of worship.

The difficult question was who should replace the registrar. This was a point on which Nonconformists were deeply divided. There were those—chiefly the Wesleyan Methodists—who prioritised equality with the established Church. For them, the issue was one of status, and their ideal solution was for all their ministers to be automatically entitled to solemnise marriages just as Anglican clergy were. But there were also those—primarily Baptists and Congregationalists—who rejected, on theological grounds, the idea of centralised control, had no ordained ministry and saw legal recognition as tantamount to becoming agents of the state. In prioritising freedom, their preferences were as varied as their practices: some were happy with the status quo; some agreed with the Wesleyans that reform was necessary but thought legal recognition of ministers for the purposes of marriage registration should be optional; and

33 The second clergyman was acquitted on the basis that, since the couple were already married, he committed no offence in conducting a ceremony for them without banns or licence.

34 Marriage and Registration Act 1856, s 12.

35 General Register Office, *Content of Civil Marriage Ceremonies: a consultation document on proposed changes to regulation and guidance to registration officers* (June 2005), para 4.

some favoured a model of reform that would enable marriages to be conducted in their chapels without a registrar being present but that did not depend on the authorisation of a specific minister. It was, in other words, something of a challenge to find a model that would work for all Nonconformists, since none of these solutions would leave them both equal *and* free.

In addition to the question of who would be responsible for registering the marriage, there was the practical issue of how they would do so. Registered places of worship were not issued with their own register books; the registrar brought the official register with him and took it away again. In broad terms, proposals for reform adopted one of two strategies. One was to issue register books to specific authorised ministers who would conduct and register marriages. This, of course, was not a solution for those denominations that did not have ministers. The other was to require the person officiating at the marriage, whoever this might be, to complete certain prescribed documentation confirming that the marriage had taken place and return it to the superintendent registrar. While this neatly sidestepped the question of the status of the person officiating, and obviated the need for new register books to be issued, the risk was that it would leave such marriages entirely unregulated.

The solution proposed in what became the Marriage Act 1898 was that each registered place of worship should be issued with its own register book once a person had been authorised to take responsibility for the custody of that register, the registration of marriages and the making of returns. Authorisation would be the responsibility of the governing body of the registered building. The new terminology of ‘authorised person’ seemed a graceful compromise between the competing concepts of ‘authorised minister’ and ‘person officiating’. However, amid the flurry of minor textual amendments made to the Bill during its final stages in the House of Commons, there was one in particular that fundamentally changed what it meant to be authorised: the removal of any references to an authorised person ‘officiating at’ or ‘solemnising’ a wedding made their role an essentially passive one. The form of the new register books further emphasised that authorisation was not an acknowledgement of the status of non-Anglican ministers but simply permission to act as a replacement registrar: the printed phrase ‘in the presence of’ implied that they were no more than witnesses. When combined with the cumbersome regulations issued by the Registrar General, and the threateningly vague provision that a failure to comply with any of those regulations, or any other requirement under the Act, would constitute an offence, the role was not an attractive one.³⁶ Most weddings in registered buildings continued to take place before a registrar, and the 1898 Act was regarded as neither a satisfactory nor a final resolution of the issues.

36 Marriage Act 1898, s 12.

Indeed, one new division had been introduced. While any certified place of worship could be registered for marriage, only places of worship that could have been registered under the 1836 Act—that is to say, only Christian ones—could appoint an authorised person. That particular limitation was to acquire significance for a new strand of Liberal Judaism that emerged in the early twentieth century. The existing exemption for Jewish marriages assumed authorisation either by the Board of Deputies or by the West London synagogue. Liberal Jewish synagogues could be registered for weddings but they had to accept the presence of the registrar and the other constraints that went with marrying in a registered place of worship. So, too, did those marrying at the mosque in Woking when it was registered for weddings in 1920.

CHANGES TO MARRIAGE LAW IN THE TWENTIETH CENTURY

A brief perusal of the statute book might suggest that nothing much changed in the 50 years after the 1898 Act. But it is worth noting the escalating complexity of the law. The Church of England's new power to pass measures meant that numerous changes to the law governing its weddings were made,³⁷ causing them to diverge from the statute and from the laws applicable to the newly dis-established Church in Wales.³⁸

It is also worth noting the mistakes and misunderstandings that resulted in Parliament having to pass a considerable number of validating orders—including, somewhat ironically, to the legislation governing the passage of validating orders.³⁹ Of the 46 orders made validating marriages between 1920 and 1949, 28 involved questions about the status of Anglican churches. There were churches that had once been the parish church but had been replaced by a new church within the same parish; new churches that had been consecrated but not formally substituted for the existing parish church; and churches that had been built in addition to the parish church. In the case of St John, Shotley, in Northumberland, the realisation of the necessity of the church being licensed seems to have been particularly belated: the church was finally licensed for weddings on 11 November 1936, having been consecrated on 30 August 1837.⁴⁰

In the light of the number of changes made during this period, and how they had been effected, weddings law was an obvious candidate for the new process of consolidating legislation. The schedule to the resulting Marriage Act 1949 listed

37 Church of England Assembly (Powers) Act 1919. See, eg, Marriage Measure 1930; Banns of Marriage Measure 1934; Marriage (Licensing of Chapels) Measure 1938; Diocesan Reorganisation Committees Measure 1941.

38 T Glyn Watkin, 'Vestiges of establishment: the ecclesiastical and canon law of the Church in Wales', (1990) 2 *Ecc LJ* 110–115; N Roberts, 'The historical background to the Marriage (Wales) Act 2010', (2011) 13 *Ecc LJ* 39–56.

39 Marriages Validity (Provisional Orders) Act 1924.

40 St John, Shotley Order: Provisional Orders (Marriages) Confirmation Act 1937.

no fewer than 38 enactments, covering a period of more than 400 years, that it had repealed either in whole or in part. Yet, while bringing all of these provisions together made the law more accessible, the Act did not necessarily make that law any more coherent. The new Act clarified certain points but obscured others, failed to resolve some long-standing ambiguities and did nothing to address some of the controversies that had arisen in the preceding decades.

Looking at the structure of the 1949 Act, it is hard to escape the suspicion that reformers simply started with the oldest statute governing marriage and worked forwards from there. Far from improving the manner in which the law was stated, this chronologically inspired structure served to overemphasise the distinction between Anglican and other marriages: the heading of part II referred to a religious rite, that of part III to authorisation by a civil official. The new structure also continued to obscure how tightly regulated Quaker and Jewish marriages were, although it did at least clarify that they were subject to the same annulling provisions as applied to marriages in registered places of worship or register offices, which had previously been a matter of debate. Those casting their eye down the list of headings in the statute might well conclude that such weddings were almost free from regulation. The single section headed 'Marriages according to usages of Society of Friends' merely set out who could marry in a Quaker ceremony. The complex rules as to who was required to certify those who could register Quaker and Jewish marriages—which revealed the structures within which such marriages were to take place—appeared under the unilluminating heading 'Interpretation of part IV'.⁴¹

But one existing anomaly disappeared as a result of drafting. During the course of discussions about whether Liberal Jews should be put in the same position as Orthodox and Reform Jews, the Joint Committee became aware that Liberal synagogues could not appoint their own authorised persons under the Marriage Act 1898. The General Register Office argued that the removal of this particular anomaly was of sufficient importance to require separate legislation rather than being revised as part of the process of consolidation. It would, however, have been difficult to continue this anomaly without openly discriminating against non-Christian groups: there was no longer any justification for making the right to appoint an authorised person contingent on whether a particular place of worship could have been registered for marriages under the 1836 Act, since this Act was about to be abolished. As a result, this particular piece of discrimination against non-Christian religions was abolished by default.

In legal terms, surprisingly little has changed since 1949. There have been a number of minor changes: Liberal Jews finally acquired the same status as Reform Jews;⁴² the preconditions for places of worship to be registered have

41 Marriage Act 1949, s 67.

42 Marriage (Secretaries of Synagogues) Act 1959.

been modified;⁴³ sharing arrangements enabled Anglicans and other denominations to celebrate weddings in the same building;⁴⁴ and the Registrar General's licence provided an alternative to the Anglican special licence for deathbed weddings.⁴⁵ How couples have married has changed more radically. Parity between numbers of religious and civil weddings was achieved in the 1970s and the balance shifted more dramatically after the Marriage Act 1994 introduced the possibility of marrying on 'approved premises'.⁴⁶ But the number of couples who are having an additional ceremony with some religious element suggests that we should not see this trend as a rejection of religion: it can also be seen as indicative of some of the obstacles in the way of getting married according to religious rites, just as it was for many of those getting married in the first register office weddings.

CONCLUSION

The problems with the current law, and how these might be solved, are addressed elsewhere.⁴⁷ There are just three points that I want to reiterate by way of conclusion. First, many of the problems with the current law are of long standing. Religious-only marriages are nothing new, nor are they confined to any one religious tradition. Even when the 1836 Act was enacted, it did not fit with how many couples wanted to marry or enable them to marry according to their own religious rites, and this was exacerbated by the change that was made in 1856. Second, the longevity of a particular requirement does not mean that it was introduced for a good reason or has worked well. Many of the current requirements have their origins in past panics, political expediency, tactical compromises or quick fixes. Third, none of the reforms to date have addressed weddings law as a whole. We need to recognise the limitations of earlier legislative interventions. The 1836 Act added options rather than creating a coherent new law. The 1856 Act was a quick-fix political response to a collection of specific issues that had emerged. The 1898 Act was a single-issue reform. And the 1949 Act simply consolidated all of the complexities of the law into a single statute. Therein lie the reasons why the current law of marriage is uncertain, complex, inconsistent and in need of reform.

43 Marriage Acts Amendment Act 1958; Marriage (Registration of Buildings) Act 1990.

44 Sharing of Church Buildings Act 1969.

45 Marriage (Registrar General's Licence) Act 1970.

46 J Haskey, 'Marriages in "approved premises" in England and Wales: the impact of the 1994 Marriage Act', (1998) 93 *Population Trends* 38–52; B Wilson and S Smallwood, 'Understanding recent trends in marriage', (2007) 128 *Population Trends* 24–32.

47 R Sandberg, 'Marital problems: the Law Commission's "Getting married" Consultation Paper and non-qualifying wedding ceremonies', (2021) 23 *Ecc LJ* 140–159; N Hopkins, E Welch and S Hussaini, 'The Law Commission's project on weddings law reform', (2021) 23 *Ecc LJ* 267–279.